

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

THIS DOCUMENT RELATES TO:

Warren Horn (0:17-cv-04515-JNE-FLN)
Janice Williams (0:17-cv-04519-JNE-FLN)

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs for the above-captioned actions hereby oppose the motion to dismiss of Defendants 3M Company and Arizant Healthcare, Inc. ("Defendants" collectively). The motion to dismiss and accompanying brief in support are Docs. 1124 and 1126 ("Motion" collectively).

Defendants have asked the Court to dismiss these actions with prejudice for failure to comply with the Court's Pretrial Order No. 14 ("PTO 14"), which requires a plaintiff to serve a completed and signed Plaintiff Fact Sheet ("PFS"), medical authorization, and supporting documents.

PLAINTIFFS' ACTIONS SHOULD NOT BE DISMISSED WITH PREJUDICE

Plaintiffs have yet to return the documents set forth by this Court's PTO 14. Plaintiffs are aware of the obligations regarding completing and serving PFS, medical authorization, and supporting documents, pursuant to PTO 14. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiffs from responding to the counsel's contact attempts and efforts or completing the

Court mandated PFS and medical authorization. The undersigned counsel attempted to reach Plaintiffs numerous times including but not limited to the following:

Warren Horn

- October 13, 2017 – Mailed PFS and medical authorization;
- November 7, 2017 – Mailed a PFS follow-up letter;
- November 17, 2017 – Left a voicemail re: PFS;
- December 7, 2017 – Left a voicemail re: PFS;
- December 18, 2017 – Left a voicemail re: PFS;
- January 12, 2018 – Sent a letter re: PFS and obligations set forth in PTO 14;
- January 17, 2018 – Searched for any alternative contact information, left a voicemail, and sent an email;
- January 25, 2018 – Sent an email re: PFS and obligations set forth in PTO 14;
- February 2, 2018 – Sent a letter re: PFS and obligations set forth in PTO 14;
- February 21, 2018 – Sent a letter re: PFS and obligations set forth in PTO 14;
- March 2, 2018 – Sent a letter advising Warren Horn that Defendants moved to seek dismissal of his case with prejudice.

Janice Williams

- October 13, 2017 – Mailed PFS and medical authorization;
- October 30, 2017 – Mailed a PFS follow-up letter;
- October 31, 2017 – Attempted to reach Janice Williams via telephone but the number was disconnected;
- November 1, 2017 – Searched for any alternative contact information and mailed a PFS follow-up letter;

- November 10, 2017 – Sent an email re: PFS and obligations set forth in PTO 14;
- December 18, 2017 – Sent an email re: PFS and obligations set forth in PTO 14;
- January 3, 2018 – Sent a letter re: PFS and obligations set forth in PTO 14;
- January 12, 2018 – Sent a PFS follow-up letter;
- January 25, 2018 – Sent an email re: PFS and obligations set forth in PTO 14;
- February 2, 2018 – Sent a letter re: PFS and obligations set forth in PTO 14;
- February 12, 2018 – Sent an email re: PFS;
- March 2, 2018 - Sent a letter advising Janice Williams that Defendants moved to seek dismissal of her case with prejudice.

In light of the foregoing, the undersigned counsel respectfully seeks a 120-day extension on PTO 14. Nevertheless, if the Court deems dismissal of Plaintiffs' actions to be proper, then they should be dismissed without prejudice granting an opportunity for Plaintiffs to reinstate their actions.

DATED: March 7, 2018

Respectfully submitted,

BERNSTEIN LIEBHARD LLP

By: /s/ Daniel C. Burke

Daniel C. Burke
10 E. 40th Street
New York, NY 10016
Telephone: (212) 779-1414
Facsimile: (212) 779-3218
Email: dburke@bernlieb.com
Email: dlee@bernlieb.com

Attorneys for Plaintiff